

Foreign Earned Income for U.S. Overseas Taxpayers



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*The information contained in this presentation is
current as of the date it was presented.
It should not be considered official guidance.*

Foreign Earned Income Exclusion

- Available to U.S. citizens and resident aliens who live and work in a foreign country and meet the requirements.
- Not available to nonresident aliens.
- You claim it on Form 2555/2555-EZ.
- The exclusion amount is indexed annually for inflation.
- You may also be able to exclude (if an employee) or deduct (if self-employed) the cost of foreign housing.

Foreign Earned Income Exclusion Requirements

To claim the foreign earned income exclusion, foreign housing exclusion, or foreign housing deduction, you must:

- have foreign earned income, and
- have a foreign tax home, and
- meet either the Bona Fide Residence Test or the Physical Presence Test, and
- make a valid election.

What Is Foreign Earned Income?

- Income for services performed in a foreign country
- What matters is where the services were performed, not when or where the income was received.

What Is Foreign Earned Income?

- If you are an employee:
 - Wages and salaries
 - Commissions
 - Bonuses
 - Tips
 - Allowances
 - Reimbursements
 - Other compensation
 - Noncash income such as lodging and meals

What Is Foreign Earned Income?

- If you are self-employed:
 - Professional fees
 - If capital is a material income producing factor, a reasonable allowance for compensation (but no more than 30% of net profits)

What Is Not Foreign Earned Income?

- Income paid by the United States or its agencies to government employees or to members of the U.S. armed forces, even if earned in a foreign country
- Income earned in a U.S. territory
- Income earned in Antarctica
- Income earned in international waters or airspace

What Is Not Foreign Earned Income?

- Pensions, annuities or social security benefits
- Value of meals and lodging furnished for convenience of employer
- Payment received after the end of the tax year following the tax year in which you performed the services that gave rise to the payment

Foreign Tax Home Requirement

- Your regular or main place of business, employment or post of duty must be in a foreign country or countries, and
- You cannot have an abode in the United States during the same period.
- You can only have one tax home at any given time.

Location of Ties Determines Abode

- **Economic ties**, such as:
 - Locations of bank accounts
 - Locations of real and personal property owned
 - In some cases, whether “excess housing costs” were incurred

Location of Ties Determines Abode

- **Familial ties**, such as:
 - Location of immediate family (spouse, children, parents)
 - Cultural background

Location of Ties Determines Abode

- **Personal ties**, such as:
 - Jurisdiction in which the individual voted / held driver's license
 - Location of place of worship / social activities
 - Familiarity with language / extent of integration into the foreign culture

Bona Fide Residence Test

- You must be either:
 - a U.S. citizen, or
 - a U.S. resident alien who is a citizen or national of a country with which the U.S. has an income tax treaty in effect.
- You must be a bona fide resident of a foreign country or countries for an uninterrupted period that includes an entire tax year (except for brief temporary visits to U.S. or elsewhere).

Bona Fide Residence Test:

Factors to Consider

- Intent
- Establishment of home temporarily in the foreign country for an indefinite period
- Extent of assimilation into life and society of foreign country
- Physical presence in foreign country
- Nature, extent and reasons for temporary absences
- Whether paid taxes to foreign country
- Whether spouse and children also resided in the foreign country

Bona Fide Residence Test:

Factors to Consider

- You are not considered a bona fide resident of a foreign country if
 - you submitted a statement to the authorities of that country claiming to be a nonresident of that country, and either
 - your income is not subject to tax in that country because you are a nonresident of that country, or
 - such a determination not yet been resolved.

Bona Fide Residence Test:

Factors to Consider

- An income tax exemption provided in a treaty or other international agreement is not considered a statement of non-residency.

Physical Presence Test

- You must be physically present in a foreign country(s) for 330 full days during a period of 12 consecutive months.
- The 12-month period may begin with any day.
- The 330 days do not have to be consecutive, as long as they fall within a period of 12 consecutive months.



Physical Presence Test

- The number of qualifying days is based on the total number of days during the year in question that fall within your chosen 12-month measurement period.
- Presence in a foreign country or countries need not be for business. Days spent on vacation (or for any other purpose) in a foreign country are also counted, so long as your tax home is still in a foreign country.

Physical Presence Test: Number of Qualifying Days

- The 12-month period may begin before or after arrival in a foreign country, end before or after departure from a foreign country, and include days when you do not have a tax home in a foreign country.
- You may maximize the number of qualifying days in the tax year by sliding a 12-month period forward or backward up to 35 days, so long as it still contains 330 full days of presence in a foreign country or countries.

Physical Presence Test: Number of Qualifying Days

- Also, 12-month qualifying periods may overlap. Count each day in a given tax year only once, even if it falls within more than one qualifying period.



Waiver of Time Requirements

- The minimum time requirements can be waived if an individual must leave a foreign country because of war, civil unrest, or other adverse conditions.
- ***A list of countries which qualify for the waiver , and the departure dates, is published in an Internal Revenue Bulletin..***

Waiver of Time Requirements

You **must show that:**

- you had a tax home in the foreign country, and
- on or before the beginning date of the waiver, you reasonably could have been expected to meet the time requirements as a bona fide resident or under the physical presence test except for the adverse conditions.

Filing Requirements

- You must file a return even if you have no tax liability after claiming the exclusion
- File Form 2555 or 2555-EZ with your U.S. Income Tax Return (Form 1040)



Making a Valid IRC § 911 Election

- The election to exclude foreign earned income and the election to exclude the cost of foreign housing are separate elections.
- You may make one or both elections by attaching Form 2555/2555 EZ to tax return for the first year for which it is effective.

Making a Valid IRC § 911 Election

- Generally, the election(s) must be made with a:
 - Timely filed return (including any extensions),
 - Return amending a timely filed return during the claim period under IRC § 6511(a), or
 - Late-filed return within one year from the original due date of the return (without regard to extensions)

2015 Maximum Foreign Earned Income Exclusion

- If you qualify, you could exclude the lesser of:
 - \$100,800 (adjusted annually)
 - or
 - Your foreign earned income for 2015 minus your foreign housing exclusion
- If your qualifying period is less than a year, the limitation amount must be prorated.

Foreign Housing Costs

In addition to the foreign earned income exclusion you may be able to take a:

- Foreign housing exclusion (if an employee)
- or**
- Foreign housing deduction (if self-employed)

Note: Complete Part VI of Form 2555 to claim the foreign housing exclusion or deduction.



Effect on Credits or Deductions

- Cannot take foreign tax credit or deduction for taxes on the excluded income
- Not eligible for earned income credit
- Must add back the excluded amount when computing modified additional gross income for purposes of child tax credit and/or additional child tax credit.

Claiming the Exclusion

- Both spouses may claim a foreign earned income exclusion and/or a housing exclusion/deduction, as long as each spouse meets the requirements.
- A separate Form 2555 or 2555-EZ must be filed for each spouse.

Which Form – 2555 or 2555-EZ?

- Use Form 2555-EZ if all the following apply:
 - U.S. citizen or resident alien
 - Earned wages/salaries in foreign country
 - Total foreign earned income less than \$100,800
 - Reported total foreign earned income on Line 7 of your 2015 Form 1040
 - Filing calendar year return for 12-month period
 - No self-employment income
 - No business or moving expenses
 - No foreign housing exclusion or deduction
 - No foreign housing deduction carryover

Completing Form 2555-EZ

- Part I – Tests To See If You Can Take The Foreign Earned Income Exclusion
 - Bona Fide Residence Test
 - Physical Presence Test
 - Tax Home Test
- Part II – General Information
- Part III – Days Present In The United States
- Part IV – Figuring Your Foreign Earned Income Exclusion

Completing Form 2555

- Part I – General Information
- Part II – Bona Fide Residence Test
- Part III – Physical Presence Test
- Part IV – Total Foreign Earned Income
- Part V – Housing Exclusion or Deduction?
- Part VI – Housing Expenses
Calculating Housing Exclusion
- Part VII – Foreign Earned Income Exclusion
- Part VIII – Less Deductions Allocable to Excluded
Income
- Part IX – Calculating Housing Deduction

Figuring Tax on Income Not Excluded

- Use the tax rates that would have applied if you had not claimed the exclusion(s).
- See instructions for Form 1040 and complete the Foreign Earned Income Tax Worksheet.
- If you owe must attach Form 6251, Alternative Minimum Tax—Individuals, use the worksheet in the Form 6251 instructions.

Questions



Foreign Earned Income for U.S. Overseas Taxpayers



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Resources

- Publication 54, *Tax Guide for U.S. Citizens and Resident Aliens Abroad*
- Form 2555, *Foreign Earned Income*, and its instructions
- Form 2555-EZ, *Foreign Earned Income*, and its instructions
- <https://www.irs.gov/Individuals/International-Taxpayers/Foreign-Earned-Income-Exclusion>